

# AN FTC GUIDE TO DEALINGS IN THE SUPPLY CHAIN

## REFUSAL TO SUPPLY

**IN GENERAL, A SELLER HAS THE RIGHT TO CHOOSE ITS BUSINESS PARTNERS.** A firm's refusal to deal with any other person or company is lawful so long as the refusal is not the product of an anticompetitive agreement with other firms or part of a predatory or exclusionary strategy to acquire or maintain a monopoly. This principle was laid out by the Supreme Court more than 85 years ago:

"The purpose of the Sherman Act is to ... preserve the right of freedom of trade. In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long recognized right of a trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal."

This remains a fundamental rule of federal antitrust law and draws a line between legal independent decision-making on the one hand and illegal joint or monopolistic activity on the other.

**Q: I OWN A SMALL CLOTHING STORE AND THE MAKER OF A POPULAR LINE OF CLOTHING RECENTLY DROPPED ME AS AN OUTLET. I'M SURE IT'S BECAUSE MY COMPETITORS COMPLAINED THAT I SELL BELOW THE SUGGESTED RETAIL PRICE. THE EXPLANATION WAS THE MANUFACTURER'S POLICY: ITS PRODUCTS SHOULD NOT BE SOLD BELOW THE SUGGESTED RETAIL PRICE, AND DEALERS THAT DO NOT COMPLY ARE SUBJECT TO TERMINATION. IS IT LEGAL FOR THE MANUFACTURER TO CUT ME OFF?**

**A:** Yes. The law generally allows a manufacturer to have a policy that its dealers should sell a product above a certain minimum price, and to terminate a dealer that does not honor that policy. Manufacturers may choose to adopt this kind of policy because it encourages dealers to provide full customer service and prevents other dealers, who may not provide full service, from taking away customers and "free riding" on the services provided by other dealers. However, it may be illegal for the manufacturer to drop you if it has an agreement with your competitors to cut you off to help maintain a price they agreed to.

**A FIRM'S REFUSAL TO DEAL IS LAWFUL SO LONG AS THE REFUSAL IS NOT THE PRODUCT OF AN ANTICOMPETITIVE AGREEMENT WITH OTHER FIRMS OR PART OF A PREDATORY OR EXCLUSIONARY STRATEGY TO ACQUIRE OR MAINTAIN A MONOPOLY.**

